

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

Larry Lee,

Plaintiff,

v.

Dean Willey, et al.,

Defendants.

Case No. 10-12625

Honorable Nancy G. Edmunds

**ORDER AND OPINION GRANTING DEFENDANT MEHRA'S SECOND MOTION FOR
SUMMARY JUDGMENT [133]**

On February 20, 2014, the Court held an evidentiary hearing to determine whether Plaintiff exhausted his administrative remedies for his claims in this case. At the hearing's conclusion, the Court found that, as to the main claim in this case, Plaintiff's Eighth Amendment deliberate indifference claim alleging that Defendants failed to prevent an alleged sexual assault, the Court found that Plaintiff was not credible and found that he did not exhaust his administrative remedies.

Given that holding, Defendant Mehra has filed a second motion for summary judgment. (Dkt. 133.) Defendant Mehra argues, since the Court held that Plaintiff did not exhaust his administrative remedies for the sexual assault claim, that summary judgment is now appropriate. (Def.'s 2d Mot. for Summ. J. at 2.)

Defendant Mehra requests an entry of judgment nunc pro tunc as of the time of the filing of the complaint. (Def.'s 2d Mot. at 3.)

Plaintiff has filed a response. (Dkt. 134.) In the response, Plaintiff acknowledges the

Court's holding, and agrees, if the Court grants Defendant Mehra's motion, that the Court should enter a nunc pro tunc order.

The Court agrees with Defendant Mehra. Given the Court's holding at the hearing, and for the reasons stated in that hearing on the record, the Court finds that Plaintiff Lee did not exhaust his administrative remedies against Defendant Mehra. Summary judgment is therefore appropriate. The Court GRANTS Defendant Mehra's second motion for summary judgment nunc pro tunc as of the date of the complaint.

So ordered.

s/Nancy G. Edmunds
Nancy G. Edmunds
United States District Judge

Dated: March 4, 2014

I hereby certify that a copy of the foregoing document was served upon counsel of record on March 4, 2014, by electronic and/or ordinary mail.

s/Johnetta M. Curry-Williams
Case Manager
Acting in the Absence of Carol Hemeyer